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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 84

W. L. MATTHEWS, ET AL.,
Appellants

vs.

J. F. RODGERS, ET AL.,
Appellees

SUPPLEMENTAL BRIEF FOR APPELLEES ON RE-ARGUMENT

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In response to the direction of the Court, we respectfully submit herewith additional authorities and record reference on the two points, upon which the Court desires further argument.

POINT I.

DOES THE MATTER IN CONTROVERSY IN THIS CASE EXCEED THE SUM OR VALUE OF THREE THOUSAND DOLLARS?

In addition to the authorities referred to in our original brief on the above point, we beg leave to submit to the court the following additional authorities:

American Fertilizing Co. v. Board of Agriculture, (C. C. N. C. 1890) 43 Fed. 609;

Gallardo v. Questell (C. C. A. Porto Rico 1928) 29 Fed (2d) 897;

St. Louis S. W. Ry. Co. v. Emerson, 30 Fed (2d) 322, (C. C. A. 7th).

Station WBT v. Poulnot, 46 Fed. (2d) 671 (D.C. E. D. S. C.)

Swan Island Club v. Ansell, 51 Fed. (2d) 337 (C. C. A. 4th)

Hughes Federal Practice Vol. 1 Section 465-474.

POINT III.

IS THERE EQUITY UPON THE FACE OF THE BILL?

(c) Section 304 of Hemingway's Annotated Mississippi Code 1927 (now Section 420, Mississippi Code 1930) creates a substantive right enforceable in the courts of the United States. (See original brief of appellees, pages 36 to 44.)

On the argument of this case, our attention was called to a decision of this court to-wit: **Henrietta Mills v. Rutherford, County,** 281 U. S. 121, which counsel for both appelalnts and appellees had overlooked in preparing their briefs and arguments. Since the argument mentioned, we have with some care undertaken to examine the opinion of the court in the above mentioned case, and with all deference, submit

to the court the following features of that case which differentiate it from the case at Bar:

(1) The case is based upon the provisions of Section 723 of the Revised Statutes and Section 267 of the Judicial Code (U. S. C. A. Title 28, 384), providing in substance that a suit in equity shall not be sustained where a plain, adequate, and complete remedy may be had at law.

(2) The appellant in that case had the right to bring suit at law against the county under a statute of North Carolina and recover the taxes which might have been paid by him both to the state and county.

(3) The appellant likewise had the same right which would have been enforceable at law in the courts of the United States.

(4) It is true that said appellant also had the additional and cumulative remedy of injunction under the laws of the State of North Carolina, but this did not infringe upon or impair in any way the right of the action at law carefully described by this court.

In Mississippi, no right at law whatsoever exists. If the court be of the opinion that the remedy by way of mandamus is available, then, as demonstrated in the original brief, such right is not a remedy at law. If the court be of the opinion that there is no right of action whatsoever as contended by the State, then it is apparent that no remedy at law exists in Mississippi in favor of the appellees. For the court's convenience, we attach in the appendix hereto a copy of

Section 8270 of Hemingway's 1927 Code (3276 Code 1930) referred to at page 33 of the original brief. We direct the court's attention to the fact that the State construes this statute to mean that it is entirely discretionary, with the Auditor of Public Accounts and the Attorney General of the state, as to whether or not they will authorize a refund of taxes, and that there is no remedy in any court to enforce such authorization in the negative.

We therefore contend that the right to an injunction in equity granted by Section 304 of Hemingway's Code, **supra**, is a substantive right and not one of a mere remedial character. We further contend that, applying the prohibition contained in Section 723 of the Revised Statutes (267 of the Judicial Code,) it is apparent that this prohibition cannot prevail for the reason that this is a case where there exists no remedy at law whatsoever.

The opposing counsel seeks to escape the force of the foregoing argument on the ground that an adequate remedy at law is provided appellees by the decisions of the Supreme Court of the State of Mississippi, in that appellees had the right to proceed against the Tax Collector at law, for taxes sought to be enjoined in this case, in that event it should ultimately be determined under the peculiarly existant facts, that the tax imposed by Chapter 88 of the Laws of 1930 constituted a burden upon interstate commerce. This contention requires scrutiny.

We direct out attention to this question under two branches.

(1) Do the laws of the State of Mississippi pro-

vide any remedy at law as against the State for the recovery of the taxes in question?

(2) Do the laws of the State of Mississippi provide any remedy as against the Tax Collector, and if so, is that an adequate remedy, within the contemplation of the rule under discussion?

We have quoted as a part of the appendix to this Brief, **Section 8270 of the Code of 1927,** (now Section 3276 of the Code of 1930), which is the only statute affording any semblance of a remedy to the appellees.

The Court will observe from an examination of the Statute in question that the remedy afforded from the terms of the Statute itself is dependent upon, first, the willingness of the Auditor of Public Accounts to audit any claim asserted for the recovery of taxes, said to have been illegally collected, **secondly,** upon the will, whim or caprice of the Attorney General to approve or disapprove the claim so propounded; thirdly, upon the action of the legislature to make an appropriation in favor of the appellees, should they be successful in obtaining favorable action upon the part of the Auditor and Attorney General. The last statement is demonstrated conclusively by the concluding clause of Statute in question, which provides as follows:

> "Provided further that nothing in this section shall be construed as authorizing a refunding of state taxes paid into the State Treasury, through error or otherwise, without an appropriation first being made to pay such refund or refunds."

We submit that it is apparent from the reading of the Statute itself that the Auditor and Attorney Gen-

eral are without power to either refuse or approve a refund of taxes, "without an appropriation first being made to pay such refund or refunds."

The Supreme Court of Mississippi has definitely decided that the Statute quoted creates no right of action whatsoever as against the State.

We refer to the case of

National Life & Accident Insurance Company vs. State (decided February 16, 1931), 132 So. (Miss) 549.

In that case the appellant Insurance Company sought the recovery of privilege taxes, which had been admittedly wrongfully collected from it. In accordance with the Statute mentioned, it propounded its claim to the Auditor. The Attorney General failed to approve or disapprove the claim as propounded. Suit was instituted and the State interposed its demurrer on, upon other grounds, that the Statute to which we have referred, does not authorize suit against the State, even though it be admitted that the taxes sought to be recovered had been wrongfully collected and paid into the State Treasury. We quote the concluding sentence of the opinion of the Court, after a review of the authorities of our State.

> "That there has been no way provided by which these tax payers may sue the State, seems to be deliberate on the part of the legislature."

Therefore, it is apparent and at least conceded by acquiescence on the part of the Attorney General, that no action of any sort at law or otherwise is available

to the appellees for the recovery of the tax in controversy.

It is strenuously contended, however, on the authority of certain decisions of the Supreme Court of the State of Mississippi that a remedy at law is provided by the decisions of that Court for the recovery of the tax in question from the collector himself. The decisions relied upon are the following:

Coulson vs. Harris, 43 Miss. 728;

Tuttle vs. Everett, 51 Miss. 27;

Vicksburg vs. Butler, 56 Miss. 72;

Richardson vs. Scott, 47 Miss. 236.

We ask the Court to consider the following distinguishable features of the cases cited.

Coulson vs. Harris, supra, (decided in May 1871), simply adopted the rule now obtaining in this Court that the simple illegality of the tax creates no equity in and of itself. Without legislative action conferring jurisdiction in the Courts of Equity.

Tuttle vs. Everett, supra, adopts the rule that an acton will lie at law as against a tax collector, while the taxes collected remain in his hands and provided that the taxes colected are collected for a County or other local Corporation.

Vicksburg vs. Butler, supra, announces the rule that a municipality in Mississippi is subject to an action at law for taxes collected by its tax collector and paid

over to the municipality, which taxes were wrongfully collected.

Richardson vs. Scott, supra, announces the doctrine that there might exist equities prior to the Statute heretofore referred to, which would authorize the prosecution of a suit in equity to enjoin the colection of taxes.

The following features should be carefully noted by the Court, which distinguish the cases cited from the case at bar.

(1) All are cases relative to the collection of taxes on behalf of a municipal sub-division of the State, (by Mississippi statute such municipalites are made subject to any suit at law.

(2) The only case approving a right of action in the tax payer as against the tax collector was one in which the tax collector was acting on behalf of a County, the right of action so approved was expressly limited to those cases where the tax collected was for the benefit of a County or other local corporations. Such right of action was likewise limited to such time as the taxes might **remain in the hands of the tax collector.**

(3) All of the cases relied upon were decided prior to the adoption of the Code of 1880, which provided in so many words, the equitable remedy of injunction.

We respectfully submit that an action under the presence status of the laws of Mississippi will not lie against the tax collector for the recovery of taxes.

The exclusive remedy is provided by Section 8270 of Hemingway's Code of 1927, (Section 3276 of the Code of 1930), which is a section empowering the State Auditor and Attorney General to approve claims for taxes said to have been illegally collected.

The Court will observe that **Section 3289 of the Code of 1930,** quoted in the appendix, requires the tax collector to pay over all taxes to the State Treasurer on or before the 20th day of the months succeeding that in which colected. The taxes in question were required to be paid on September 30, 1930, and the tax collector was under the duty, or at least had the power, had they been paid by appellees, to pay the taxes into the State Treasury, on October 1st, next thereafter. Had the tax collector failed to pay the taxes received by him within the time stated above, he would have subjected himself to a liability for damages at the rate of 30 per cent (see Section 3290 of the Code of 1930, made a part of the appendix.)

It, therefore, is perfectly reasonable to say that under the present state of the statutes of Mississippi, a tax payer would be denied an action against the tax collector for the reason that to adopt the contrary rule, the courts would subject the tax collector of the State to liability for taxes collected, even though the collection thereof were commanded by statute, and then would leave him remediless as against the State for reimbursement. Such a holding would necessarily impede, retard, if not destroy the orderly collection of taxes.

The Court will likewise observe that under and by virtue of **Section 3276 of the Code of 1930,** it is immaterial whether a tax paid to the tax collector is

refund thereof by the legislature was not necessary.

We have, therefore, undertaken to demonstrate that the right of injunction granted by **Section 420 of the Mississippi Code of 1930**, being Section 304, Code of 1927, creates a substantive right enforceable in the Courts of the United States, in contradistinction to a pure and simple remedial right in the Courts of the State of Mississippi. We have undertaken to demonstrate that the right thus created by statute was created by the legislature with full knowledge and realization that there was no plain, full or adequate remedy at law, under the laws of the State, in favor of tax payers, against whom an unlawful or unconstitutional tax had been levied.

Therefore, the remedy is and has never been since this enactment a cumulative remedy, but an exclusive remedy.

Apparently the distinction between the right **vel non** to sue the collecting officer in the differentiation between the collection of a tax valid on its face and where its illegality is manifest. This Court has so held.

Erskine vs. Hohnback, 14 Wall 613

Haffin vs. Mason, 15 Wall. 671

Stutsman County vs. Wallace, 142 U. S. 293.

In **Stutsman County vs. Wallace**, supra, it was held by this Court that a tax collector is not liable, when he enforced a tax against property of a class, which is **prima** facie, taxable, but which by virtue of peculiar circumstances is exempt, which exemption is, and was not known to the tax collector.

It will be observed by the Court in the instant case that it is not contended that there are not certain classes of Cotton Buyers in the State of Mississippi, who are liable for the Privilege Tax. By virtue of the course of business of appellees, i. e., engaging in interstate commerce, the tax though lawful on its face is invalid or void as it may be applied to these appellees. Therefore, it follows, that if and in the event the tax collectors, appellants herein, should enforce the tax against appellees and exact the same from them, as provided by **Chapter 88 of the Laws of 1930,** appellees would be remediless in an action at law to recover the tax from the taxing authorities charged with the duty of collecting the privilege tax.

As further demonstrative of the inadequacy of a remedy at law, we desire to point out to the Court, the following excerpts from the admitted facts, in existence at the time of the filing of the bill and the application for the injunction:

(a) The officers charged with the duty of enforcing the provisions of the act in question were threatening each of the appellees with separate suits to enforce payment of the tax and penalties.

(b) Threatening appellees with criminal prosecution for failure to pay said tax and procure said license.

(c) Threatening issuance of warrants of distress upon and the seizure of the real and personal property of appellees.

(d) Threatening the arrest of each of appellees for

failure to procure the license provided by said act.

(Record Page 11)

Such action on the part of said officers would seriously impair, if not destroy the business of appellees, which impairment would cause the loss to appellees of their connections in the terminal markets.

Appellees had entered into contracts then outstanding with their connections and customers and were at the time of the filing of the bill deterred from purchasing cotton in performance of the contracts and the continuance of their business.

(Record 15-16)

It is submitted that the above facts are quite similar to, if not substantially identical, with the facts stated in the decision of this Court in

Rast vs. Van Deman & Lewis Co. 240 U. S. 342.

The above cause involved a statute of the State of Florida imposing a privilege tax on merchants issuing coupons or profit sharing certificates, or certificates of like character. The suit was instituted by a number of merchants in Florida, suing in behalf of themselves and others similarly situated, seeking to enjoin the enforcement of the statute insofar as it imposed a license tax on each of said merchants, as violative of the equal protective clause of the Fourteenth Amendment to the Constitution of the United States.

A motion to dismiss was filed by the Attorney General of Florida on, among other grounds, the following:

(a) Complainants had a complete and absolute remedy at law.

Van Deman & Lewis Company vs. Rast, 214 Fed. 827.

The District Court in disposing of this ground of the motion to dismiss, stated as follows:

> "The second, fourth, and fifth grounds of the motion may be disposed of together. The bill alleges a large number of persons interested, their liability to have their property seized, their business destroyed by such seizures and arrest, their customers lost and deprived of their avocations. Ordinarily the seizure of personal property will not be enjoined by a court of equity, but in the instant case under the allegations of the bill of complaint that such seizures and arrests, on account of the peculiar uses and character of the property, whereby they maintain their business and occupations, their losses would be impossible of ascertainment and computation, and thus they have no adequate remedy at law, and brings this case within the exception recognized by all the courts.

And it is on the theory that complainants in the cases had a complete, adequate, and sufficient remedy at law that the Supreme Court of Florida rendered the decision cited by the Attorney General in **Odlin V. Woodruff, 31 Fla. 160, 12 South. 227, 22, L.R.A. 669,** wherein they cite with approval the case of **Baldwin V. Tucker, 16 Fla. 258,** wherein the court says:

> "Courts of chancery have uniformly refused to grant an injunction to restrain * * * a mere tres-

pass, except in rare cases, where the mischief would be irreparable by reason of some extraordinary value or quality of the things endangered."

The Supreme Court of the United States, in the case of **Boise Hot & Cold Water Co. vs. Boise City, 213 U. S. 276, 29 Sup. Ct. 426, 53 L. Ed. 796**, say:

"Equity will not interpose where there is a remedy at law which is as complete, practicable, and adequate as equity could afford * * * Injunctions should not issue against the enforcement of the tax merely because it is unconstitutional or illegal, unless other circumstances bring the case within some clear ground of equity jurisdiction. Even though some states may, for convenience of remedy, permit equity to enjoin the collection of a tax for mere illegality, courts of a different and paramount sovereignty should not do so, and federal courts should not interfere by injunction with the fiscal arrangements of a state, if the rights involved can be preserved in any other manner."

"The showing made by the bill of complaint that these complaintants have large stock of goods and merchandise subject to the very drastic exactions of this section of the statute, that they are under contract for the sale of such merchandise, and that the seizure of their stocks, and arrests, as threatened, will cause the loss of trade and customers, interrupt their business and occupations, cause the sacrifice of stock seized, and subject them to heavy fines, etc., in our opinion make such case of irreparable damage to property and property rights as is properly cognizable in equity,

and falls squarely within the rules laid down by the Supreme Court above quoted."

This Court, in passing upon the question of whether or not the Bill of Complaint set forth grounds of equitable relief, concurred in the view of the Three Judge District Court, above set forth, reversing the cause, however, on its merits.

It is submitted that the admitted facts in the record in the instant cause bring this case squarely within the ruling of the above cause.

See also:

Grand Union Tea Company vs. Evans, 216 Fed 791

wherein, the same rule was followed.

Another case peculiarly like the facts in the instant case is

Little vs. Tanner, 208 Fed. 605

affirmed by this Court in

Tanner vs. Little, 240 U. S. 369

as to jurisdiction, but as in the **Rast Case**, reversed the cause on its merits, the Court holding that the **Rast Case** and the facts in the **Tanner** case involved a statute of like import.

In the **Tanner case** there was a license fee of $6,000.00 imposed on merchants using and dealing in stamps or coupons similar to the coupons in the **Rast case.**

Equity jurisdiction was invoked, "to avoid a multiplicity of suits and to prevent irreparable loss and injury to the business and property of the plaintiffs." In retaining jurisdiction the Court at page 609 of 208 Federal, stated:

> "The remaining grounds of the motion to dismiss, namely, that the bill does not state facts sufficient to entitle the plaintiffs to the relief sought, and that they have a plain, speedy, and adequate remedy at law, may be considered together. It is no doubt true as a general rule that a court of equity has no jurisdiction to enjoin criminal proceedings; but there are well-recognized exceptions to that rule. As said by the court in Dobbins vs. Los Angeles, 95 U. S. 223, 241,
>
> > "It is well settled that, where property rights will be destroyed, unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity."

See, also, Ex parte Young, supra.

We are of the opinion that this case falls within the exception to the general rule. While in form this is a suit to enjoin the enforcement of a criminal statute, it is in legal effect a suit to enjoin the exaction of an illegal licence fee or the imposition of an illegal tax. And:

> "It would seem that, if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction

would not be ousted by the fact that the state had chosen to assert its power to enforce such law by indictment or other criminal proceedings." Davis & Farnum Mfg. Co. v. Los Angeles, 189.

When we consider the real object of this suit, the vast numbers affected by it, the severity of the penalties imposed, the unauthorized interference with legitimate business methods, and that goods now in original packages containing stamps and other devices are rendered practically valueless, the case seems to call peculiarly for the intervention of a court of equity. The motion to quash and the motion to dismiss are accordingly overruled."

In addition to the facts stated in the opinion of the Court in the above cause, the following facts are shown to exist in the case at bar.

(1) The suit instituted in behalf of the plaintiffs below and some three hundred other Cotton Buyers similarly situated.

(2) A like tax has been imposed by the Board of Levee Commissioners for the Yazoo-Mississippi Delta, a political sub-division of the State of Mississippi, authorized to levy privilege taxes for privileges exercised within said levee district.

(3) A like tax in the amount of 50 per cent thereof has been imposed by the municipality of the City of Clarksdale, for privileges exercised within the corporate limits of said municipality.

(4) The State, the Levee District and the City of Clarksdale, each will institute separate and distinct suits against each of appellees, for the collection of the tax and penalties, as well as institute criminal proceedings against each of the plaintiffs and the class on behalf of which appellees instituted this cause of action.

(Record Pages 12-13)

It, therefore, appears that the whole question of law and fact involved when determined will settle the rights of each belonging to the class of plaintiffs and the right not only of the State of Mississippi, but also the right of the Board of Levee Commissioners for the Yazoo-Mississippi Delta and City of Clarksdale, and therefore, a single determination by this Court will be determinative of innumerable civil suits as well as criminal prosecutions.

(Record 13-14)

Therefore, it is submitted that not only does the records show admitted facts of irremediable damage to plaintiffs, but shows that equitable jurisdiction is vested in the Courts to avoid a multiplicity of suits.

A discussion of this question may be found in the recent case of

Gramling vs. Maxwell, 53 Fed. (2d) 256, (decided August 19, 1931.)

The above cause was presented to the District Court of the Western Division of North Carolina, three judges sitting, seeking an injunction to restrain a privilege tax in the amount of $50.00 on peddlers of fruits and vegetables. The suit was filed by the plain-

tiff in behalf of himself and others similarly situated, alleging that approximately 400 other persons were in the same plight and condition that he was. The tax was attcked on the ground that the tax violated the commerce clause of the constitution.

In that case, it was shown that a statute of North Carolina authorized:

> "Payment under protest of a contraverted tax and suit first recovered, with a provision that interest may be recovered as well as principal, and that in the case of recovery of a judgment for taxes paid the State, the same shall be refunded by the State."

We take the liberty of quoting at length from the decision in the above cause.

> "The statute provides a remedy available in the federal courts as well as in the courts of the state; and the rights of a taxpayer to recover thereunder has been inferentially recognized by the Supreme Court of the state in entertaining an action instituted thereunder and deciding the case presented on the merits. Great Atlantic & Pacific Tea Co. vs. Maxwell, 199, N. C. 433, 154 S. E. 838. The statute is free of ambiguity and the rights of the taxpayer are clear. There is no such uncertainty, therefore, as confronted the taxpayer in Atlantic C. L. R. Co. v. Doughton, 262 U. S. 413,43 S. Ct. 620, 67 L. Ed. 1051, and Union Pac. R. Co. v. Board of Com'rs of Weld County, 247 U. S. 282, 38 S. Ct. 510, 62 L. Ed. 1110; and, if the case involved only the rights of a single taxpayer and the question were not presented as to

paid under protest or not, in order to authorize the tax payer's application for a refund thereof.

Certainly, therefore, it was not in contemplation of the legislature, that if and in the event a tax levied by the legislature should thereafter prove to be invalid or unlawful, that the tax collector, having paid the tax as provided by law into the Treasury of the State, should be held personally liable for the refund of the taxes to the tax payer, over a period of years.

The Supreme Court of the State of Mississippi in the case of

Blodgett vs. Pearl River County, 134 Miss. 816,

specifically held that a tax payer was not barred from propounding his claim for refund of taxes, until the expiration of six years from and after the date of the payment thereof. It will also be carefully noted that all of the cases relied upon by the Attorney General were decided prior to the enactment of the Code of 1880, which first created the equitable remedy by injunction.

The other cases cited by counsel decided by the Supreme Court of the State of Mississippi, after the Code of 1880 was adopted, deal with the right of appeal from ad valorem taxes and assessment, wherein a specific right of appeal from any assessment challenged by the tax payer is granted; this being a complete remedy granted by the Statute to remedy or redress the wrong complained of, therefore, has no application to the challenge of any privilege tax, imposed by the specific terms of an act of the legislature, as is the tax in question here.

The case of **Taylor vs. Guy, 119 Miss. 357**, cited by appellants to the effect that moneys may be refunded to the tax collector, without an appropriation by the legislature is wholly without application in the case at bar. The statute under consideration by the Supreme Court in that cause provides as follows:

> "Where any sheriff or tax collector has, or shall hereafter, by mistake or oversight, erroneously pay into the state treasury any moneys on account of ad valorem or privilege taxes, such officer may make application to the auditor for repayment of such taxes, and the auditor and attorney general shall thoroughly investigate such claim, and if found to be due the attorney-general shall so certify the auditor, who shall draw his warrant in favor of such sheriff, to be paid out of same fund in which it was erroneously paid into the State."

(Section 3278 of the Code of 1930)

In the above cause an application for refund under the provisions of the above statute was made by a Sheriff for moneys paid "by mistake or oversight" into the State Treasury, which application was audited by the Auditor of Public Accounts and approved by the Attorney General, and a warrant pursuant to said suit was issued on the Treasurer of the State, and the Treasurer of the State undertook to decline to pay the same. The only force and effect of the decision was that the warrant covered moneys paid by mistake or oversight by the Sheriff, therefore, was not a part of the funds of the State of Mississippi, nor did the State of Mississippi have color of title thereto, and that, therefore, an appropriation for the

the inability of the taxpayer to pay the tax, we should feel constrained to hold that the remedy, at law thus provided was adequate and that suit for injunction would not lie, Henrietta Mills v. Rutherford County, 281 U. S. 121, 50 S. Ct. 270, 74 L. Ed. 737; Singer Sewing Machine Co. v. Benedict, 229, U. S. 481, 33 S. Ct. 942, 57 L. Ed. 1288; Southern Ry. Co. v. Query (D. C.) 21 F. (2d) 333.

The case is not one, however, involving merely the right of a single taxpayer. It is a class suit instituted in behalf of a large number of peach growers affected by the statute; and we thing that it may be maintained in equity for the purpose of avoiding the multiplicity of suits which would otherwise result. Whatever may have been the rule formerly as to the right to maintain a class of this character in the federal courts, we think that, since the adoption of the 28th Equity Rule (28 USCA Sec. 723), the right to maintain such a suit cannot be denied. Little v. Tanner (D. C.) 208 F. 605; Everglades Drainage League v. Brownard (D. C.) 253 F. 246, 252; Risley v. City of Utica (C. C.) 173 F. 502, 506. And, if such suit may be maintained, there can be no question but that it is speedier, more efficacious, and more satisfactory for all parties concerned than the institution of a hundred or more actions at law for the recovery of taxes paid under protest. The remedy provided by the statute cannot, therefore, in view of the situation be deemed an adequate remedy as compared with the suit in equity which eliminates so much useless and cumbersome litigation. While the federal courts should be slow to exercise their injunctive power against the colection of taxes by the state where any other method of relief is open to the taxpayer (see

State R. R. Tax Cases, 92 U. S. 575, 23 L. Ed. 663), there is no reason why they should not exercise it in a case such as this, where the taxing statute is clearly and unmistakbly unconstitutionl and where the refusal to grant the injunction will necessarily result in a multiplicity of suits and great burden and expense to the parties.

"It is well settled that for the purpose of avoiding a multiplicity of suits equity will enjoin the enforcement of an unconstitutional taxng statute. Dows v. Chcago, 11 Wall, 108, 20 L. Ed. 65; Cummings v. Merchants National Bank, 101 U. S. 153, 25 L. Ed. 903; Ogden City v. Armstrong 168 U. S. 224, 18 S. Ct. 98, 103, 42 L. Ed. 144; Raymond v. Chicago Union Traction Co., 207 U. S. 20, 28 S. Ct. 7, 52 L. Ed. 78, 12 Ann Cas. 757; U. S. v. Board of Com'rs of Osage County, 251 U. S. 128, 40 S. Ct. 100, 64 L. Ed. 184. The only question is whether the prevention of such multiplicity as would result from members of a class paying an unconstitutional tax and bring suits for recovery thereof comes within the rule and justifies the awarding of an injunction in a suit brought in behalf of the members of the class. We think that it does. While there is authority to the contrary (see Cutting v. Gilbert, Fed. Cas. No. 3519; Youngblood v. Sexton, 32 Mich. 406, 20 Am. Rep. 654), reason and the overwhelming weight of authority sustain this jurisdiction in equity.

In Ogden City v. Armstrong, supra, a suit was filed by certain property owners in behalf of themeselves and others similarly situated to restrain the officials of a city from selling real estate

in satisfaction of paving assessments. One of the objections to jurisdiction was that plaintiffs should have sought relef at law and not in equity. After pointing out that the remedy by certiorari was not adequate, the court went on to say: "Not only, however, was there a want of an adequate remedy in proceeding by a writ of certiorari, but we think equitable jurisdiction was properly invoked to prevent a multiplicity of suits, and also to relieve the plaintiffs from a cloud upon their title."

In Little v. Tanner (D. C.) 208 F. 605, 609, a number of persons joined in a bill seeking an injunction against the enforcement of a taxing statute of the state of Washington. Motion was made to quash the bill on a number of grounds including misjoiner of parties and causes of action and that complaintants had an adequate remedy at law. The joinder was sustained under Equity Rule 38; and on the point that there was an adequate remedy at law the court, speaking through the late Judge Rudkin, used language which is peculiarly appropriate to the facts here. Said he: "When we consider the real object of this suit, the vast numbers affected by it, the severity of the penalties imposed, the unauthorized interference with legitimate business methods, and that goods now in original packages containing stamps and other devices are rendered practically valueless(the case seems to call peculiarly for the intervention of a court of equity. The motion to quash and the motion to dismiss are accordingly overruled." The Supreme Court reversed the decision of the lower court on the merits, but concurred with it on the question of jurisdiction.

Taner v. Little,n 240 U. S. 369, 380, 36 S. Ct. 379, 60 L. Ed. 691.

The rule supported by the weight of authority is well stated by the Supreme Court of Missouri in Ranney v. Bader, 67 Mo. 476 , as follows: "Equity will maintain jurisdiction to prevent multiplicity of suits, and no stronger case could be put for entertaining jurisdiction under this rule, than is presented, when one taxpayer for himself and all other taxpayers of a township or county, similarly interested, brings his bill, asking the chancellor to put forth restraining process to prevent the imposition and collection of an unauthorized tax, and thus settle in one suit, what it would take hundreds, and, perhaps, thousands to do, if such relief were denied, and the parties subjected to the payment of such tax were driven, each one, to his action at law for redress."

In Chicago v. Collins, 175 Ill. 445, 51 N. E. 907, 909, 49 L. R. A. 408, 67 Am. St. Rep. 224, suit was brought by 373 complainants, in behalf of themselves and others similarly situated, to enjoin the enforcement of an ordinance imposing a license fee on vehicles. It was objected that there was an adequate remedy at law by paying the fee and suing to recover it. In sustaining the jurisdiction in equity, the court said: "No inflexible rule can be laid down for the determination of the question as to whether jurisdiction exists in a court of equity. In general, an adequate legal remedy will suffice to make such courts hesitate in acting. But inadequacy in granting relief for the determination of a right may arise from causes other than mere forms of remedy, and it will

not do to sacrifice justice on the mere ground of the form of the remedy, where convincing facts show that adequate relief can best be had in the forum of a court of equity. In this case 373 complainants present facts showing that between 200,000 and 300,000 citizens and taxpayers are affected by the provisions of the ordinance, and, if compelled to pay the illegal tax, hardship and injustice will result to an enormous number of persons. If they pay the tax, and are compelled to resort to a court of law to recover back the amount so paid, the business of the courts will be obstructed by the number of actions of the same character. Long delay will ensue, and the costs to the persons so paying such illegal tax or license fee will be greater than the amount to be recovered. Under any circumstance, if the license exacted is illegal, it would amount to oppression and injustice to a large part of the population of city of Chicago, and this bill presents a case for the jurisdiction of a court of equity."

In Carlton V. Newman, 77 Me. 408, 1 A 194, 195, involving the right to maintain a class suit to enjoin the enforcement of a school district tax, the court, while holding to its general rule as to the adequacy of a legal remedy, said: "But we are of the opinion that when it appears that an entire school district tax is illegal, because assessed without authority of law, a bill to enjoin its collecton, brought by all of the taxpayers of the district, jointly, on whose polls and estates the tax has been assessed, or by any number thereof on behalf of themselves and all the others similarly situated, may be sustained upon the ground of inherent jurisdiction of equity to interpose for

the purpose of preventing a multiplicity of suits; that although each taxpayer has some legal remedy, it is grossly inadequate when compared with the comprehensive and complete relief afforded by a single decree." And see Fairley v. Duluth, 150 Minn. 374, 185, N. W. 390, 32 A. L. R. 1258; Williams v. County Court, 26 W. Va. 488, 53 Am. Rep. 94; Missouri K. & T. R. Co. v. Shannon, 100 Tex. 379, 100 S. W. 138, 10 L. R. A. (N. S.) 681; Sherman v. Benford, 10 R. I. 559; Bull v. Read, 13 Grat. (Va.) 78; Glenn v. Waddel, 23 Ohio St. 605; Little Rock v. Prather, 46 Ark. 471; Wilkie v. Chicago, 188 Ill. 444, 58 N. E. 1004, 80 Am. St. Rep. 182; Hewin v. Atlanta, 121 Ga. 723, 49 S. E. 765, 67 L. R. A. 795, 2 Ann. Cas. 296; 26 R. C. L. 461, 462; note 22 L. R. A. 703; note 32 A. L. R. 1266 et. seq.; Pomeroy's Equity Jurisprudence (4th Ed.) Vol. 1, Sec. 260 and notes.

Professor Pomeroy, in his Equity Jurisprudence (4th Ed.) Vol. 1, p. 450, et seq., thus states his conclusions with respect to the rule and the authorities sustaining it: "In a large number of the states the rule has been settled in well-considered and often repeated adjudications by courts of the highest character for ability and learning, that a suit in equity will be sustained when brought by any number of taxpayers joined as co-plaintiffs, or by one taxpayer suing on behalf of himself and all others similarly situated, or sometimes even by a single taxpayer suing on his own account, to enjoin the enforcement and collection, and to set aside and annul, any and every kind of tax or assessment laid by county, town, or city authorities, either for general or special purposes, whether it be entirely personal in its nature and liability, of whether it be made a lien on the prop-

erty of each taxpayer, whenever such tax is illegal. * * * * In the face of every sort of objection urged against a judicial interference with the governmental and executive function of taxation, these courts have uniformly held that the legal remedy of the individual taxpayer against an illegal tax, either by action for damages or perhaps by certiorari, was wholly inadequate; and that to restrict him to such imperfect remedy would, in most instances be a substantial denial of justice, which conclusion is, in my opinion, unquestionably true. The courts have therefore sustained these equitable suits, and have granted the relief and have uniformly placed their decision upon the inherent jurisdiction of equity to interfere for the prevention of a multiplicity of suits. The result has demonstrated the fact that complete and final relief may be given to an entire community by means of one judicial decree, which would otherwise require an indefinite amount of separate litigation by indivduals, even if it were attainable by any means. In several of the states there is a long series of these cases, extending through a considerable period of time, and it may well happen that in the earliest decisions of such a series the court has stated the reasons for its judgment at large, and has expressly announced the principle of preventing multiplicity of suits as the ground of its jurisdiction, while in the succeedng ones the judges have not thought it necessary to repeat the reasons and ground which had already been fully explained. It is plain that the latter cases, no less than the former ones, are an authority for the doctrine under examination. In all these suits by lot-owners to be relieved from a local assessment, by tax payers to be relieved

from a tax or burden of public debt, there is no pretense of any privity, or existing legal relation, or common property or other right, among the plaintiffs individually, or between them as a body and the defendant. There is no common right of the single adversary party against them all, as is found in the case of a parson against his parishioners for tithes, or of the lord of a manor against his tenants for a general fine, or for certain rights of common; nor is there any common right or interest among them against their single adversary. The only community among them is in the question at issue to be decided by the court; in the mere external fact that all their remedial rights arose at the same time, from the same wrongful act, are of the same kind, involved similar questions of fact, and depend upon the same question of law. This sort of community is sufficient, in the opinion of so many and so able courts, to authorize and require the exercise, under such circumstances, of the equitable jurisdiction, in order to prevent a multiplicity of suits."

It is, therefore, respectfully submitted that there is undoubted equity on the face of the bill and the admitted facts in the record and that the object of the bill sought, undoubtedly demonstrates that more than $3,000.00 is involved in the controversy.

Respectfully submitted,

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Of counsel for Appellees.

CERTIFICATE OF COUNSEL

This is to certify that I have this day delivered to Honorable J. A. Lauderdale, Assistant Attorney General, a copy of the above and foregoing brief.

This the 6th day of January, A. D., 1932.

EDWARD W. SMITH,
Of counsel for Appellees.

CERTIFICATE

This is to certify that I have received a true copy of the above and foregoing brief.

This the 7th day of January, A. D., 1932.

J. A. LAUDERDALE,
Of counsel for Appellants.

APPENDIX

Excerpts Mississippi Annotated Code of 1930

SEC. 3276. TAXES ERRONEOUSLY PAID REFUNDED.—If any person, firm or corporation has paid or shall hereafter pay to the auditor of public accounts or to any tax collector, through error or otherwise whether paid under protest or not, any ad valorem, privilege or excise taxes for which such person, firm or corporation was not liable, or if any such taxpayer has paid any such tax in excess of the sum for which he or it was liable, and any such erroneous payment or overpayment has been paid into the proper treasury, then, in any such event, the auditor of public accounts is hereby authorized and required, upon proper application of any such claimant, to make a careful investigation of all such claims, or, if he shall find that any taxes or moneys have been, or may hereafter be, erroneously paid into the treasury of the state, county, or levee boards, for the purchase or redemption of lands erroneously sold for taxes heretofore or hereafter by any tax collector, he shall audit such claims against each separate fund in proportion to the amount paid over to such fund in each case, and he shall submit such audited claim with the voucher and evidence on which such claim is based, to the attorney-general for his inspection and approval, and if the attorney-general be of the opinion that such claims should be paid he shall approve the same, and the auditor shall thereupon file such voucher and other papers necessary in each case, in his office, as a voucher, and issue his warrant on the state treasury in favor of the claimant for the amount of purchase-

money or taxes erroneously paid into the state treasury, and the auditor shall audit the amount of taxes paid the county and levee boards, as the case may be, and shall certify the amounts found to be due to the clerk of the board of supervisors and secretary of the levee board, and the said board of supervisors or levee board, shall cause the warrant to be issued on the treasurer of the county, or levee board, in favor of the claimant as certified by the auditor of public accounts, as the case may be, and the county depository, or the treasurer of the levee board, is hereby directed, authorized and required to pay such claims; provided, that it shall not be necessary in order to authorize such refund that the tax payment was made under protest or because of coercive measures taken on the part of the collecting officers. Provided, however, that nothing in this section shall be so construed as to authorize the recovery or repayment of any tax heretofore levied and collected by any special road district, drainage district, or separate school district, on account of, or upon the ground that the law authorizing such tax was unconstitutional, whether the unconstitutionality of such tax be based upon the creation or mode of operation of any special road district, drainage district or separate school district. Provided further, that nothing in this secton shall be construed as authorizing the refunding of state taxes paid into the state treasury through error, or otherwise, without an appropriation first being made to pay such refund or refunds.

SEC. 3289. TAX COLLECTOR'S REPORT MONTHLY—Taxes Paid Over—The Tax Collector shall make reports, in writing, verified by his affidav-

it on the first day of each month, or within twenty days thereafter, except as hereinafter provided, to the auditor of public accounts and to the clerk of the board of supervisors, of all taxes collected by him during the preceding month for the state, levee and county respectively, and if he has collected none, the report shall be made out and state that fact, and he shall, at or within the same time, pay over all taxes collected to the state treasurer and county treasury, respectively.

SEC. 3290. FINAL REPORT AT END OF FISCAL YEAR—His final report and settlement with the auditor of public acounts and with the clerks of the board of supervisors for the taxes of any fiscal year shall be made on or within fifteen days after the first day of September of the same year. If a tax collector fail to make any report, or to pay over any taxes as above required, he shall pay damages of thirty per centum thereon, and interest on said amount of principal and damages at the rate of six per centum per annum for the time the same shall be due until paid. The auditor and clerk shall not omit in any case to charge the damage to the collector, when incurred, but the same shall be remitted on the certificate of the governor and attorney-general that they are satisfied that the delay has not been wilful or avoidable by the collector.

SUPREME COURT OF THE UNITED STATES.

No. 84.—October Term, 1931.

W. L. Matthews et al., Appellants, vs. J. F. Rodgers et al. } Appeal from the District Court of the United States for the Northern District of Mississippi.

[February 15, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

This is an appeal, §§ 238, 266 of the Judicial Code, from a decree of a District Court of three judges, for the Northern District of Mississippi, enjoining the collection from the several appellees of a state tax, as an unconstitutional burden on interstate commerce. — F. (2d) —. After argument here on the merits, the cause was restored to the docket "for reargument, limited to the question of the jurisdiction of the District Court both with respect to the amount involved in the suit and the jurisdiction of the court as a court of equity"; reargument has been had accordingly.

The bill of complaint assails the constitutionality of § 56, c. 88, 1930 Laws of Mississippi, as applied to appellees. The section imposes an annual license or "privilege" tax of $100, payable in advance by "every person engaged in the business of buying or selling cotton for himself." It also requires employers engaged in the business of buying or selling cotton to pay a similar "tax of twenty-five dollars ($25.00) for every employe engaged in their business as buyer or seller." Penalties are imposed, in double the amount of the tax for its non-payment. § 225. Failure to make application for the license, or engaging in the business without having procured the license or paid the tax, are misdemeanors, punishable by fine not exceeding $500 or imprisonment not exceeding six months, or both. § 242.

The bill, which is in the form of a class bill, filed by the numerous appellees for the benefit of themselves and others similarly situated, alleges that they are engaged in interstate and foreign commerce,

in the course of which they purchase cotton within the state and sell and ship it in interstate or foreign commerce to purchasers outside the state; that the business of each of the several appellees and the right to conduct it is of a value of more than $3,000, the jurisdictional amount for suits brought in a district court of the United States; that the tax imposed by the state statute is, as to them, an unconstitutional burden on interstate commerce, and that appellants, state officers, charged with the duty of collecting the tax, threaten to enforce its collection by criminal proceedings and the imposition of penalties. The bill states that resort to equity to prevent collection of the tax is either necessary or authorized for the following, among other, reasons:

(1) That the enforcement of the unconstitutional statute would irreparably injure or destroy the business of each of the appellees.

(2) That the taxes, if paid, can not be recovered by any action or proceeding at law.

(3) That § 304 of Hemingway's Annotated Mississippi Code of 1927, has conferred on the appellees the right to proceed in equity in the State courts to enjoin the collection of an unconstitutional tax, and that that remedy is available in the Federal district court.

(4) That resort to equity is necessary in order to avoid a multiplicity of separate suits by the appellees and others similarly situated, three hundred in all, to enjoin collection of the tax, or otherwise necessary in order to recover it if paid or to prevent successive prosecutions for the violation of the Act, in all of which suits or proceedings the issue of the constitutionality of the tax would be substantially the same.

The right of appellees, if any, to maintain the present suit, is conferred by § 24 of the Judicial Code, 28 U. S. C. § 41 (1), which, regardless of the citizenship of the parties to the suit, vests in district courts of the United States jurisdiction over suits at law or in equity "arising under the Constitution or laws of the United States", where the matter in controversy exceeds $3,000. Although the present suit arises under the Constitution of the United States, see *Davis* v. *Wallace*, 257 U. S. 478, and it be assumed, without deciding, that the jurisdictional amount is involved, it cannot be maintained if not within the equity jurisdiction of the district court. The want of equity jurisdiction, if

obvious, may and should be objected to by the court of its own motion. In other cases, this jurisdictional requirement, unlike the others mentioned, may be treated as waived if the objection is not presented by the defendant *in limine*. *Duignan* v. *United States*, 274 U. S. 195, 199; *Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481, 484; *Thompson* v. *Railroad Companies*, 6 Wall. 135; compare *Matson Navigation Co.* v. *United States*, — U. S. —, January 4, 1932; *Hilton* v. *Dickinson*, 108 U. S. 165, 168; *Grace* v. *American Central Insurance Company*, 109 U. S. 278, 283-284; *Börs* v. *Preston*, 111 U. S. 252, 255. Here, the objection to the equity jurisdiction of the district court was properly raised by appellants' motion to dismiss the bill, and is preserved by their assignments of error in this Court.

Section 16 of the Judiciary Act of 1789, 1 Stat. 82, perpetuated without material change as Rev. Stat. 723, 28 U. S. C. § 384, Jud. Code § 267, declares that suits in equity shall not be sustained in the courts of the United States "in any case where plain, adequate and complete remedy may be had at law." The effect of this section, which was but declaratory of the rule in equity, established long before its adoption, is to emphasize the rule and to forbid in terms recourse to the extraordinary remedies of equity where the right asserted may be fully protected at law. See *Deweese* v. *Reinhard*, 165 U. S. 386, 389; *New York Guaranty Co.* v. *Memphis Water Co.*, 107 U. S. 205, 214.

The reason for this guiding principle is of peculiar force in cases where the suit, like the present one, is brought to enjoin the collection of a state tax in courts of a different, though paramount sovereignty. The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved, Jud. Code § 237, or to his suit at law in the federal courts

if the essential elements of federal jurisdiction are present. See *Boise Artesian Hot and Cold Water Co.* v. *Boise City*, 213 U. S. 276; *Shelton* v. *Platt*, 139 U. S. 591; *Dows* v. *Chicago*, 11 Wall. 108, 110, 112.

It may be assumed that if appellees do not pay the challenged tax, and in consequence of that omission they are subjected, as it is alleged they will be, to the civil and criminal penalties for non-payment, the resulting injury to their business will be irreparable and can be avoided only by resort to equity to prevent the threatened wrong. But appellants insist that the appellees are under no such constraint, either to expose themselves to the penalties for failure to pay the tax, or to seek equitable relief against its collection, since each of them may pay the tax to the collecting officer under protest and, under the laws of Mississippi, may maintain a suit at law for its recovery on the ground that it was exacted in violation of the Constitution of the United States. That such a procedure saves to the taxpayer his federal right, and if available will defeat the jurisdiction of federal courts to enjoin the collection of the tax, has long been the settled rule in this Court. *Henrietta Mills* v. *Rutherford County*, 281 U. S. 121; *Arkansas Building & Loan Association* v. *Madden*, 175 U. S. 269; *Atchison, Topeka & Santa Fe Ry.* v. *O'Connor*, 223 U. S. 280; *Shelton* v. *Platt, supra; Singer Sewing Machine Co.* v. *Benedict, supra; Allen* v. *Pullman's Palace Car Co.*, 139 U. S. 658; *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681.

From an examination of the decisions of the highest court of the state we conclude, as the Attorney General of the State insists, that that procedure is open to the appellees in Mississippi, if the tax is paid under protest, to avoid penalties or criminal proceedings. In *Coulson* v. *Harris*, 43 Miss. 728, the Supreme Court of Mississippi denied the jurisdiction of equity to enjoin the collection of an illegally assessed tax on the sole ground that the taxpayer might pay the tax to the collecting officer and sue at law for its recovery. In *Tuttle* v. *Everett*, 51 Miss. 27, recovery was allowed of a tax thus paid, in a suit at law brought against the collector before he had paid over the tax to the proper treasury. In *City of Vicksburg* v. *Butler*, 56 Miss. 72, and *Pearl River County* v. *Lacy Lumber Co.*, 124 Miss. 85, suits at law for recovery of a tax, were maintained against the city, in the first case,

and the county, in the second, to which the collector had paid the taxes. But in the former the court was at pains to point out, pp. 75, 76:

"Some of the cases refer to a notice to the collector that suit will be brought to recover the money back. That notice is necessary, if the payer intends to sue the collector. After its receipt, if he pays it over to the proper treasury, he does so at his risk, and does not relieve himself from responsibility. If, however, he pays it over without such notice, suit can only be brought against his principal,—in this case the city of Vicksburg."

In *Pearl River County* v. *Lacy Lumber Co., supra,* the court said, p. 109:

"We do not think that the county can shield itself from repayment of money collected under an unconstitutional law, paid under protest, on the ground that the county had disbursed the money so collected into various taxing districts, or has expended the money which it wrongfully collected. The fact that the county might not be able to recover from the taxing districts the amount of money paid to such districts would not exempt it from liability to the taxpayer from whom it wrongfully collected it."

Such a suit, although against the collecting officer rather than the state or municipality, affords an adequate legal remedy, in the absence of allegations in the bill, which are wanting here, of special circumstances showing inability of the taxpayer to pay the tax or of the collecting officer to respond to the judgment: see *Arkansas Building & Loan Association* v. *Madden, supra,* p. 274; *Atchison, Topeka & Santa Fe Ry.* v. *O'Connor, supra,* p. 285; *Singer Sewing Machine Co.* v. *Benedict, supra,* p. 487; and is the rule in Mississippi: *Coulson* v. *Harris, supra,* p. 752; *Richardson* v. *Scott,* 47 Miss. 236.

Collection of the money by the collector in the name of the state, if wrongful, would not protect him. *Atchison, Topeka & Santa Fe Ry.* v. *O'Connor, supra.* The statutes, §§ 3289, 3290, Mississippi Code of 1930, which require payment over by the collector of taxes to the appropriate treasury, allow the penalties for non-payment to be remitted on certificate of the governor or attorney general "if they are satisfied that the delay has not been wilful or avoidable by the collector", and § 3278 makes provision for the repayment to any sheriff or tax collector of taxes "by mistake or oversight erroneously paid" to the state treasurer.

See *Taylor* v. *Guy*, 119 Miss. 357. These provisions would seem to contemplate suits against the collector for the recovery of the tax and to afford him some protection in the event of a judgment against him. *Atchison, Topeka & Santa Fe Ry.* v. *O'Connor, supra*, p. 287. But as no facts are presented to show that the suit against the collector in the present case will not be adequate, it is unnecessary to consider their precise scope and effect.

The suit in equity to enjoin an illegal tax, authorized by § 304 of Hemingway's Code for 1927 (§ 420, Mississippi Code of 1930), appears not to be available when there is any other adequate remedy. See *Anderson* v. *Ingersoll*, 62 Miss. 73; *Board of Supervisors* v. *Ames*, 3 So. 37. In any case, the section cannot affect the jurisdiction of federal courts of equity. The equity jurisdiction conferred on inferior courts of the United States by § 11 of the Judiciary Act of 1789, 1 Stat. 78, and continued by § 24 of the Judicial Code, is that of the English court of chancery at the time of the separation of the two countries. *Payne* v. *Hook*, 7 Wall. 425, 430; *In re Sawyer*, 124 U. S. 200, 209-210. While local statutes may create new rights, for the protection of which recourse may be had to the remedies afforded by federal courts of equity, if the remedy at law is inadequate and the other jurisdictional requirements are present, state legislation cannot enlarge their jurisdiction by the creation of new equitable remedies, nor can it avoid or dispense with the prohibition against the maintenance of any suit in equity in the federal courts, where the legal remedy is adequate. *Henrietta Mills* v. *Rutherford County, supra*, pp. 127, 128; *Pusey & Jones Co.* v. *Hanssen*, 261 U. S. 491, 500.

Appellees' bill of complaint does not state a case within the jurisdiction of equity to avoid multiplicity of suits. As to each appellee a single suit at law brought to recover the tax will determine its constitutionality and no facts are alleged showing that more than one suit will be necessary for that purpose. See *Boise Artesian Hot & Cold Water Co.* v. *Boise City*, 213 U. S. 276, 285-286; *Dalton Adding Machine Co.* v. *State Corporation Commission*, 236 U. S. 698, 700-701.

But it is said that since each appellee must pay the tax to avoid penalties and criminal prosecution, all must maintain suits for the recovery of the tax unconstitutionally exacted, in order to protect their federal rights, and that to avoid the necessity of the

many suits, equity may draw to itself the determination of the issue necessarily involved in all the suits at law.

In general, the jurisdiction of equity to avoid multiplicity of suits at law is restricted to cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties, involving the same issues of law or fact. It does not extend to cases where there are numerous parties plaintiff or defendant, and the issues between them and the adverse party are not necessarily identical. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, 244 U. S. 368, 375; *Kelley* v. *Gill*, 245 U. S. 116, 120; *Francis* v. *Flinn*, 118 U. S. 385; *Scott* v. *Donald*, 165 U. S. 107, 115; *Hale* v. *Allinson*, 188 U. S. 56, 77 *et seq.*; and see Pomeroy, Equity Jurisprudence, (4th ed. 1918), §§ 251, 251½, 255, 259, 268.

While the present bill sets up that the single issue of constitutionality of the taxing statute is involved, the alleged unconstitutionality depends upon the application of the statute to each of the appellees, and its effect upon his business, which is alleged to be interstate commerce. The bill thus tenders separate issues of law and fact as to each appellee, the nature of his business and the manner and extent to which the tax imposes a burden on interstate commerce. The determination of these issues as to any one taxpayer would not determine them as to any other. There was thus a failure of such identity of parties and issues as would support the jurisdiction in equity.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.